

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL A. JOHNSON and DEPARTMENT OF THE ARMY,
U.S. ARMY SIGNAL CENTER, Fort Gordon, GA

*Docket No. 99-2352; Submitted on the Record;
Issued September 26, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that she is entitled to a schedule award for her accepted costochondritis, bronchospasm and gastritis conditions.

The Office of Workers' Compensation Programs has accepted that appellant, then a 32-year-old press machine operator sustained electric shock and subsequently costochondritis, bronchospasm and gastritis as an aggravation, while trying to repair press equipment at work on May 11, 1989.¹ Appellant stopped work on the date of injury and returned to a new assignment with the employing establishment on May 15, 1989.

Dr. Michael Haynes, a Board-certified physician in internal medicine and pulmonary disease, submitted a May 21, 1991 letter report, along with appellant's medical records in response to an Office inquiry concerning any residual conditions that may have developed as a result of the May 11, 1989 injury. Dr. Haynes reported that appellant had an acute onset of bronchospasm and chest wall pain, which was secondary to myalgias and costochondritis due to her electrical injury. He also reported that appellant developed mild gastritis due to treatment of the costochondritis.² The record reflects that Dr. Charles McClure, a Board-certified neurologist, conducted second opinion evaluations of appellant on June 21 and September 6, 1994 and determined that appellant did not suffer from any neurological disability, however, these reports are not of record. On March 24, 1995 Dr. Anthony Murro, a Board-certified neurologist, conducted an independent medical evaluation of appellant to determine, which of

¹ After the incident appellant developed signs and symptoms of costochondritis, bronchospasm and gastritis and consequently filed a recurrence claim on September 30, 1993, which was accepted by the Office on December 28, 1993.

² Dr. Haynes later reported in a June 29, 1993 report that appellant also developed asthma since the injury and in an April 23, 1999 report, Dr. Haynes indicated that appellant suffered from obstructive lung disease. The Board notes that the Office has not accepted either of these conditions as a result of the May 11, 1989 electrical shock injury.

her injuries related to the electrical shock that occurred on May 11, 1989 and the extent and degree of any resulting disability. Dr. Murro examined appellant and reviewed her file and medical records. He related her chief complaints of recurring numbness in her lower back, which extended to both legs and toes and reports of bronchitis, chest spasms and shortness of breath, which appellant related that she had never felt before. Appellant also related that the chemicals in the printing department caused her breathing problems. Dr. Murro found no neurological symptoms of visual loss, double vision, impaired swallowing, talking, or use of arms or legs, incoordination, imbalance or incontinence of urine or stools, except for intermittent urinary incontinence unrelated to her injury. He diagnosed appellant with electrical shock and found that the symptoms of numbness were not supported by any objective physical findings. Dr. Murro opined that the electrical injury was caused by her May 11, 1989 accident and determined that she reached maximum medical improvement of all potential neurological injuries related to the electrical injury. He gave no opinion on the diagnostic accuracy or treatment of appellant's conditions of gastritis, bronchospasm and costochondritis, which he referred to as nonneurological problems and recommended that those conditions be evaluated by a pulmonary physician.

On August 21, 1995 appellant was referred to Dr. Gary Harrison, a Board-certified physician in pulmonary disease for medical evaluation. Dr. Harrison related appellant's history, including appellant's contention that she had never had chest problems in the past and her complaints including intermittent left-sided chest pain, which had been diagnosed as costochondritis, shortness of breath and wheezing during the winter months. On examination Dr. Harrison diagnosed appellant with intermittent left-sided costochondritis following electrical shock, which he opined had not resolved and intermittent gastroesophagitis.

On May 3, 1999 appellant filed a CA-7 claim for a schedule award for her conditions of aggravation of costochondritis, bronchospasm and gastritis resulting from the May 11, 1989 injury.

By decision dated May 18, 1999, the Office found that appellant was not entitled to a schedule award. It advised that section 8107(c) of the Federal Employees' Compensation Act does not provide for a schedule award for appellant's accepted costochondritis and gastritis conditions.

The Board finds that appellant has not established that she is entitled to a schedule award for her accepted costochondritis, bronchospasm and gastritis conditions.

Under section 8107 of the Act³ and section 10.304 of the implementing federal regulations,⁴ schedule awards are payable for permanent impairment of specified body members, functions or organs. The schedule award provisions of the Act set forth the number of weeks of compensation to be paid for permanent loss of the member, functions and organs of the body listed in the schedule. No schedule award is payable for a member, function or organ of the

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

body not specified in the Act or in the regulations.⁵ The Act does not specify the manner in which the percentage of loss of a member shall be determined and the method for making such a determination rests in the sound discretion of the Office.⁶ The Office has adopted and the Board has approved, the use of the American Medical Association (A.M.A.,) *Guides to the Evaluation of Permanent Impairment* (fourth edition).⁷

In this case, the Office has accepted that appellant sustained electric shock and subsequently the conditions of costochondritis, bronchospasm and gastritis as a result of her federal employment. On May 3, 1999 appellant requested a schedule award for permanent impairment due to her conditions of costochondritis, bronchospasm and gastritis. The medical record contains supportive evidence that appellant has developed the accepted conditions, including reports from Dr. Haynes, appellant's treating physician, and a report from Dr. Harrison who conducted an independent evaluation of appellant to determine residual injury resulting from the work incident. Dr. Haynes opined that appellant had an acute onset of bronchospasm and chest wall pain, which was secondary to myalgias and costochondritis due to her electrical injury. He also opined that appellant developed mild gastritis due to treatment of the costochondritis. Dr. Harrison diagnosed appellant with intermittent left-sided costochondritis following electrical shock that had not resolved and intermittent gastroesophagitis. Although the record establishes that appellant developed the accepted conditions as a result of the May 11, 1989 injury, the Board finds that the medical evidence does not establish that appellant sustained any permanent impairment due to a condition for which a schedule award is payable. As previously stated, no schedule award is payable for permanent loss of, or loss of use of, anatomical members or functions or organs of the body not specified in the Act, or in the implementing regulations. Costochondritis, bronchospasm and gastritis are not conditions or involved parts of the body listed under section 8107(c) or in the implementing regulations as compensable. As such, appellant is not entitled to a schedule award for her accepted costochondritis, bronchospasm and gastritis conditions.

⁵ *William Edwin Muir*, 27 ECAB 579 (1976) (this principle applies equally to body members that are not enumerated in the schedule provision as it read before the 1974 amendment and to organs that are not enumerated in the regulations promulgated pursuant to the 1974 amendment); *see also Ted W. Dietderich*, 40 ECAB 963 (1989); *Thomas E. Stubbs*, 40 ECAB 647 (1989); *Thomas E. Montgomery*, 28 ECAB 294 (1977).

⁶ *See Richard W. Robinson*, 39 ECAB 484 (1988).

⁷ A.M.A., *Guides to the Evaluation of Permanent Impairment* (4th ed. rev., 1993).

The decision of the Office of Workers' Compensation Programs dated May 18, 1999 is affirmed.

Dated, Washington, DC
September 26, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member